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Attorney for Plaintiffs Local Counsel

Pro Hac Vice to be Submitted

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BBC CHARTERING CARRIERS
GmbH & CO. KG,

Plaintiff,

-against-

VITOL, INC.,

Defendant.

Case No.: 20-CV-

COMPLAINT IN ADMIRALTY

Pursuant to Rule 9(h) of the
Federal Rules of Civil Procedure

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The plaintiff, BBC Chartering Carriers GmbH & Co. KG (“BBC”), files this Complaint in admiralty and respectfully represents as follows:

Parties

1. Upon information and belief, the defendant, Vitol, Inc. (“Vitol”), is a corporation organized and existing under the laws of the State of Delaware.

2. BBC is a foreign entity organized and existing under the laws of a foreign nation, with its principal offices in Leer, Germany, which was and is engaged in the business of operating vessels for the carriage of goods by sea.

Jurisdiction

3. This Court has subject matter jurisdiction over the dispute at issue under both 28 U.S.C. § 1332 because complete diversity of the parties exists and the amount in controversy exceeds \$75,000.00 and 28 U.S.C. § 1333 because this action arises out of the breach of a maritime contract, and BBC elects to designate this as an admiralty or maritime claim under FED. R. CIV. P. R. 9(h).

4. BBC, as charterers of the M/V KINGCUP, and Vitol, as bunker supplier, entered into a contract for sale of bunkers (the “Bunker Contract”) evidenced by a Revised Bunker Fixing Note dated October 9, 2019, which is attached as Exhibit A, and the applicable terms and conditions to the Bunker Contract are attached as Exhibit B.

5. Under the Bunker Contract, BBC agreed to purchase 900 metric tons of RMG 380 ISO 8217:2010 (the “Fuel”) from Vitol for delivery to the KINGCUP.

6. This Court has personal jurisdiction over BBC and Vitol because the terms and conditions of the Bunker Contract provide jurisdiction over disputes arising out of the performance of the contract to the United States District Court for the Southern District of New York. *See* Exhibit B, Clause 21.

Underlying Facts

7. Delivery of the Fuel was completed in Houston, Texas, on October 10, 2019. *See* Marine Fuel Delivery Receipt, attached as Exhibit C.

8. Under the Bunker Contract, the Fuel was required to comply with the terms of ISO 8217:2010 and “MARPOL 73/78 ANNEX VI REGULATION 14 AND 18.” *See* Exhibit A.

9. Due to Vitol's negligence and/or breach of the Bunker Contract, the Fuel was deficient in quality and did not meet the applicable standards set forth in the Bunker Contract, as described above.

10. As a result of Vitol's negligence and/or breach of the Bunker Contract, on or about November 20, 2019, the KINGCUP sustained heavy engine damage and lost propulsion at open sea.

11. As charterers of the KINGCUP, BBC faces substantial claims from the owners and subcharterers of the KINGCUP in connection with losses caused by the consumption of the Fuel sold by Vitol.

COUNT 1 – BREACH OF MARITIME CONTRACT

12. BBC incorporates and reasserts the allegations contained in Paragraphs 1 through 11 as if fully set forth herein and further alleges both in addition and the alternative:

13. BBC brings this claim against Vitol, as more fully set out above, because Vitol entered into and breached a maritime contract with BBC.

14. BBC performed its obligations under the Bunker Contract as set forth above. Vitol, on the other hand, failed to comply with the terms and conditions of the Bunker Contract giving rise to this suit by supplying bunkers to the KINGCUP that failed to meet the applicable quality standards specified in the Bunker Contract (ISO 8217:2010 and "MARPOL 73/78 ANNEX VI REGULATION 14 AND 18."). *See Exhibit A.*

15. As a result of Vitol's breach, BBC has incurred actual damages and faces consequential claims from the owners and subcharterers of the KINGCUP.

16. Accordingly, Vitol is in breach of the Bunker Contract and is liable to BBC for all damages sustained as a result of the consumption of the deficient Fuel sold by Vitol.

COUNT 2 – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

17. BBC incorporates and reasserts the allegations contained in Paragraphs 1 through 16 as if fully set forth herein and further alleges both in addition and the alternative:

18. Vitol breached the implied warranty of merchantability arising out of its sale of the Fuel to BBC by selling bunkers to the KINGCUP that failed to meet the applicable quality standards specified in the Bunker Contract (ISO 8217:2010 and “MARPOL 73/78 ANNEX VI REGULATION 14 AND 18.”). *See Exhibit A.*

19. By selling the Fuel to BBC, Vitol implicitly warranted that the Fuel was fit for its intended purpose—i.e., the KINGCUP’s safe consumption of the Fuel.

20. Because the KINGCUP could not safely consume the Fuel, Vitol breached the implied warranty of merchantability.

21. Vitol’s breach of the implied warranty of merchantability actually and proximately caused physical damage to the KINGCUP’s engine, which led to the KINGCUP’s loss of propulsion at open sea.

22. As a result of Vitol’s breach, BBC has incurred actual damages and faces consequential claims from the owners and subcharterers of the KINGCUP.

23. Accordingly, Vitol is liable to BBC for all damages sustained as a result of the consumption of the deficient Fuel sold by Vitol.

COUNT 3 – MARITIME TORT

24. BBC incorporates and reasserts the allegations contained in Paragraphs 1 through 23 as if fully set forth herein and further alleges both in addition and the alternative:

25. In its role as the supplier of bunkers to the KINGCUP, Vitol owed BBC a duty of care to ensure that the Fuel was of suitable quality and fit for its intended purpose—*i.e.*, the KINGCUP's safe consumption of the Fuel.

26. Vitol breached its duty of care to BBC by providing the Fuel, which was of insufficient quality and unfit for the KINGCUP's consumption.

27. Vitol's breach of its duty of care to BBC actually and proximately caused physical damage to the KINGCUP's engine, which led to the KINGCUP's loss of propulsion at open sea.

28. As a result of Vitol's breach, BBC has incurred actual damages and faces consequential claims from the owners and subcharterers of the KINGCUP.

29. Accordingly, Vitol is liable to BBC for all damages sustained as a result of the consumption of the deficient Fuel sold by Vitol.

COUNT 4 – TORT INDEMNITY AND/OR CONTRIBUTION

30. BBC incorporates and reasserts the allegations contained in Paragraphs 1 through 29 as if fully set forth herein and further alleges both in addition and the alternative:

31. As a result of Vitol's breach of its duty of care to BBC, BBC has incurred actual damages and faces consequential claims from the owners and subcharterers of the KINGCUP.

32. If BBC is held liable to the owners and/or subcharterers of the KINGCUP for any damages arising out of Vitol's delivery of the deficient Fuel to the KINGCUP, Vitol will be liable to BBC under a theory of tort indemnity and/or contribution for the full amount of the judgment entered against BBC (including pre- and post-judgment interests) in addition to BBC's costs and fees incurred in the prosecution of this proceeding because BBC is completely free from fault for causing the damages sustained as a result of the consumption of the deficient Fuel sold by Vitol.

WHEREFORE, the plaintiff, BBC Chartering Carriers GmbH & Co. KG, respectfully requests that this Court enter judgment against the defendant, Vitol, Inc., for all damages sustained by BBC, with interests and costs, such as attorneys' fees as determined to be reasonable by this Court, and including pre-and post-judgment interest and any other general or equitable relief as may be just and proper.

Respectfully submitted,

/s/ Noe S. Hamra

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